

May 26, 1920

Twin Creek Irrigation Co., c/o Jos. Monson, Pres. Mt. Pleasant, Utah.  
Mountain Tunnel Irrigation Co., c/o John K. Madsen, Pres. Mt. Pleasant, Ut.  
Cedar Creek High Water Irrigation Co. c/o C.W. Sorenson, Sec. Mt. Pleasant, Ut.

Gentlemen:

On Feb. 24, 1920 the Twin Creek Irrigation Company filed a petition with the State Engineer asking for the appointment of a water commissioner to distribute the water between the Twin Creek Irrigation Company and Mountain Tunnel Irrigation Company. On March 26, 1920 the Cedar Creek High Water Irrigation petitioned the State Engineer to appoint a water commissioner to distribute the waters of Cedar Creek and of Twin Creek between the Cedar Creek High Water Irrigation Company and the Twin Creek Irrigation Company. Since then until recently affidavits have been submitted for and against the appointment of a water commissioner.

As to the petition of the Twin Creek Irrigation Company it recites in its petition that the Mountain Tunnel Irrigation Company collects water from a water shed not tributary to Twin Creek and discharges the water into the Twin Creek from which it recovers the same lower down the creek. The petition further alleges that in view of this fact the Mountain Tunnel Irrigation Company has introduced an element in the distribution of the water from Twin Creek for which it should be entirely responsible and therefore the cost of water commissioner to distribute the water between the Twin Creek and the Mountain Tunnel Irrigation Company should be borne entirely by the Mountain Tunnel Irrigation Company. Section 62, Chapter 67, Session Laws of Utah, 1919 provides that whenever in the judgment of the State Engineer or the District Court it is necessary to appoint a water commissioner for the distribution of water from any river system or water source that the salary or expenses of such commissioner should be borne pro rata by the water users. The law does not give the State Engineer the right to put the burden of paying the salary and expenses of a water commissioner that he may appoint on any river system upon any individual or set of individuals or any particular company but must pro rate the cost among all of the water users on the river system. Therefore even should the State Engineer at this time see fit to appoint a water commissioner on the petition of the Twin Creek Irrigation Company the salary and expenses of such commissioner could not be charged against the Mountain Tunnel Irrigation Company but would have to be pro rated against all of the companies on Twin Creek who were benefited by the distribution of the water by the commissioner.

As to the petition of the Cedar Creek High Water Irrigation Company it appears that the Court in rendering its decree adjudicating the water rights on Cedar Creek and Twin Creek left it optional with the plaintiffs and defendants to appoint a water commissioner to distribute the water in accordance with the decree rendered but in case the parties interested could not agree upon a water commissioner the court would then appoint one. As the result of this provision it is my understanding that the water master of Twin Creek Irrigation Company has for a number of years acted as water commissioner to distribute the waters of Cedar Creek



and Twin Creek in accordance with the court decree. The petition of the Cedar Creek High Water Irrigation Company alleges that the water commissioner of the Twin Creek Irrigation has not in recent years distributed the water in accordance with the court decree and therefore requests that the State Engineer at this time appoint a disinterested party as water commissioner, to distribute the waters of aforesaid creeks.

There is some question in my mind as to whether it is for the best interests of all parties concerned to have the State Engineer at this time appoint a water commissioner to distribute the water of aforesaid creeks. There is also some question in my mind as to whether the State Engineer would not be usurping the authority of the court in this matter, at least in so far as the court decree is concerned inasmuch as the court reserves the right to appoint a commissioner in case the parties plaintiff and defendant in the suit adjudicating the water rights of said creeks could not agree on the appointment of a water commissioner. It is evident that the court still retains jurisdiction in this matter and it appears to me that the proper remedy for the Cedar Creek High Water Irrigation Company is to appeal to the district court for the appointment of a water commissioner.

It should be furthermore borne in mind that should the State Engineer see fit to appoint a water commissioner that the cost of distributing the water would undoubtedly be greater than if the parties in interest could agree among themselves upon the appointment of a water commissioner this for the reason that we would probably have to send an outside man into the community whose salary and expenses would have to be paid and he would have to remain there continuously during the irrigation season. Furthermore we find difficulty in securing a competent man to appoint as water commissioner especially where the position is not for the year. I have considered the advisability of having the water commissioner on the Lower Sevier River look after the distribution of the water on these two creeks in case I would see fit to appoint a water commissioner. I find however that the duties of the water commissioner on the Lower Sevier River are so heavy and extensive that it would be impossible for him to take on any more work.

In view of these facts I am of the opinion that it would be best for all parties concerned to agree among themselves on the appointment of a water commissioner. Should you however desire that the State Engineer appoint the water commissioner in order to have the distribution of water under the direction of the State Engineer if you have a man locally who is competent to distribute the water and will agree among yourselves and with him as to the payment of his salary and expenses I will be willing to appoint him and have him act as water commissioner under my direction. For your information will state that any man that I may appoint as water commissioner under the State Law will be required to give a bond in the sum of \$1,000.00.

CJU/C

Very truly yours,

State Engineer.  
By  
Deputy.